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RUEHBY/AMEMBASSY CANBERRA 1908  
RUEHDK/AMEMBASSY DAKAR 2263  
RUEHKM/AMEMBASSY KAMPALA 2688  
RUEHNR/AMEMBASSY NAIROBI 5116  
RUEAIIA/CIA WASHDC  
RUZEJAA/JAC MOLESWORTH RAF MOLESWORTH UK  
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RHEFDIA/DIA WASHDC  
RUEHGV/USMISSION GENEVA 1795  
RHEHAAA/NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 04 HARARE 001145

SIPDIS

AF/S FOR B. WALCH  
DRL FOR N. WILETT  
ADDIS ABABA FOR USAU  
ADDIS ABABA FOR ACSS  
STATE PASS TO USAID FOR E. LOKEN AND L. DOBBINS  
STATE PASS TO NSC FOR SENIOR AFRICA DIRECTOR B. PITTMAN

E.O. 12958: DECL: 11/18/2018  
TAGS: [PGOV](#) [PREL](#) [ASEC](#) [PHUM](#) [KDEM](#) [ZI](#)  
SUBJECT: DETAINEES REMAIN IN CUSTODY, DESPITE COURT ORDERS  
FOR RELEASE

REF: A. A. HARARE 1183  
[B. B. HARARE 1121](#)  
[C. C. HARARE 1100](#)  
[D. D. HARARE 532](#)

Classified By: Charge d'Affaires a.i., Katherine Dhanani for reason 1.4  
(d).

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SUMMARY  
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[1](#)1. (C) At least 32 MDC and civil society activists remain in state custody following court hearings regarding their detention and charges facing them. On Christmas eve, eight detainees - including Zimbabwe Peace Project Director Jestina Mukoko - appeared in a magistrate's court for their bail hearing, but the magistrate deferred judgment until December 29, as the High Court was simultaneously hearing an urgent application calling for their immediate release. Later on December 24, High Court Judge Yunus Omerjee ruled that police should immediately release 23 MDC and civil society members who had been abducted since as early as late October 2008, had been located in police custody, but who had not been subject to detention orders. The judge also ruled that nine others who were the subject of orders of detention, including the eight who appeared before the magistrate, should be taken under police guard to a private hospital to be examined for indications of torture. However, on Christmas day, police defied the court order and refused to release any of the detainees or transport any to a hospital. Instead, all were kept in police custody with some transferred to Chikurubi Maximum Security Prison just outside Harare. The State brought 19 of the 32 to court and submitted an appeal to Omerjee's order in the Supreme Court on December 29. As of December 30, all remain in State custody and lawyers have had little or no access to the detainees. END SUMMARY.

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No Christmas Miracles in the Magistrate's Court

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12. (SBU) On the afternoon of December 24, a group of eight detainees (including a child) the police had previously denied having in custody appeared for a bail hearing before magistrate Mishrod Guvamombe to face charges of recruiting people for military training (Ref A). Dozens of diplomats, MDC supporters, journalists and members of civil society were present to observe the court proceedings. All of the detainees except Zimbabwe Peace Project Director Jestina Mukoko and ZPP Provincial Chair Broderick Takawira were MDC leaders from Zvimba South who had been abducted at the end of October (Ref C) and were the subject of a November 11 High Court order by Judge Charles Hungwe that declared their continued detention unlawful. Mukoko and Takawira were the subject of other High Court orders earlier in December calling for police to release them, if they were in custody.

13. (SBU) Lawyers from Zimbabwe Lawyers for Human Rights (ZLHR) represented the group and argued that the detainees should be immediately released in line with a series of High Court orders (Ref C) that mandated police to release abducted individuals in their custody, and - if they were to be charged - to bring them to court through a summons.

14. (SBU) State prosecutor Florence Ziyambi argued that police had not defied court orders since the detainees had not been in police custody when relevant orders to police were issued on November 11. She presented three loose-leaf pages, allegedly from a police station log book, to buttress her

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claim. The alleged logbook showed that several of the detainees had been released by police on November 4. She said that at some point later state security agents took custody of the individuals, but did not specify when. (NOTE: Ziyambi was also the prosecutor in the bail hearing of MDC Secretary General Tendai Biti (ref D) and has also been called by the Attorney General's office to act as prosecutor in other political cases. END NOTE.)

15. (SBU) Ziyambi also argued the detainees' continued custody was justifiable because of "what's going on between Botswana and Zimbabwe and how Botswana has been interfering in Zimbabwe's internal affairs." She told the court that the group had been detained because of the "seriousness" of the crimes and other recent events including police station bombings and the alleged assassination attempt on Air Marshal Perence Shiri. The group of eight was charged with contravening section 24(a) of the Criminal Code "for recruiting or training insurgents, bandits, saboteurs, or terrorists." The maximum penalty is life imprisonment.

16. (U) Simultaneously on the afternoon of the 24th, the High Court accepted an urgent application from ZLHR to immediately release 32 detainees, including the eight who had appeared in the magistrate's court, on the grounds that they were being held illegally. With this application pending, the magistrate said he did not want to "snatch" judgment from the High Court and said he would defer his ruling on bail until 8:30 on the morning of Monday December 29. awaiting a decision on bail.

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Police Refuse High Court Order to Release 32 Prisoners

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17. (SBU) Late on December 24, High Court Judge Yunus Omerjee issued a final order to the Commissioner General of Police and Chief Superintendent Magwenzi (who told lawyers he was the investigating officer) concerning the 32 prisoners known to be in custody. He ordered that Mukoko and eight others being held under warrants of detention should be released to Avenues Clinic under police guard to be examined for signs of torture by a doctor of their choice. He declared that the remaining prisoners (for whom no warrants of detention had

been issued) should be immediately released as they were illegally in custody.

¶8. (U) Police refused to comply with Omerjee's order. All detainees were kept in custody. Some were moved to Chikurubi maximum security prison. None were transferred to a medical facility.

¶9. (U) On December 29, the State appealed Omerjee's December 24 order to the Supreme Court. On the same day, ZLHR filed a contempt of court case against the State for continuing to hold the detainees in violation of the order.

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Still No Resolution in Magistrate's Court on December 29  
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¶10. (SBU) The bail hearing resumed on Monday, December 29, starting over six hours late. Detainees were forced to sit in court without any food or water. In contrast to the December 24 hearing, Mukoko and the others were finally brought into the courtroom in leg shackles and handcuffs and in standard prison clothing.

¶11. (U) In all, 19 of the detainees appeared on December 29 in five separate cases. Five individuals appeared in court

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for the first time on charges of sabotage and terrorism for allegedly planting bombs at police stations in Harare and at a railway line in Norton. Thirteen others that are subject of Omerjee's December 24 order remain in prison and have not yet been brought to court.

¶12. (C) Magistrate Guvamombe continued to defer judgment in all cases, although he did say that the nine who claim they were tortured (septel) can be seen by a doctor of their choice, but only in the prison hospital. (NOTE: Since attorneys have not had access to many of the detainees, not all have had an opportunity to report torture. END NOTE.) He deferred judgment on two cases until December 30, and the seventeen others to December 31. All remain in State custody. As of mid-day on December 30, the nine torture victims have yet to be examined by physicians from the Counseling Services Unit - their doctors of choice - as CSU must wait for a court order allowing them to examine the victims at the prison hospital.

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MDC Officials Noticeably Absent  
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¶13. (SBU) On December 29, the courtroom was again extremely crowded, with spectators sitting on the floor and standing in the hallway outside the courtroom, struggling to hear. Despite the intense interest in these cases, several civil society leaders complained to us that none of the MDC leadership was present in the courtroom on either December 24 or 29, and the MDC had not been taking their members food in jail.

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COMMENT  
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¶14. (C) The recent spate of abductions began on October 30. On December 19, MDC president Morgan Tsvangirai issued an ultimatum that if all abductees were not released or charged in court by January 1, 2009, he would ask the MDC National Council to pass a resolution to suspend SADC-sponsored negotiations with the MDC. Whether or not the result of SADC pressure on Mugabe, the current court cases would appear to satisfy Tsvangirai's precondition for MDC continued participation in negotiations. (Although there were reports of up to 40 abductees, neither the MDC nor civil society representatives are able to say if there are individuals who

have not yet been located in prison, above and beyond the 13 located but not yet charged.)

¶15. (C) We expect these court cases to follow a typical pattern of political harassment and intimidation. Individuals are charged with serious crimes against the State. After a series of bail hearings and defiance of court orders to release the accused, the accused are released. Charges remain pending, but with no credible evidence to support them, they are ultimately dropped. In rare instances, e.g., Tsvangirai's treason trial in 2005, a trial actually occurs and ends in acquittal.

¶16. (C) Although Zimbabwe's once independent judicial system has been seriously compromised, primarily through judges receiving farms and other gifts from the government, a few independent judges remain. Omerjee and Hungwe are two of them. Omerjee refused to accept a farm. Hungwe did receive a farm, but as a war veteran has felt the courage to frequently rule against the government. He is also a regular participant in events sponsored by ZLHR.

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¶17. (C) The absence of MDC leadership in observing court proceedings and in assisting its accused officials is troubling. The contrast between high-level officials, such as Tsvangirai, who have been leading a comfortable existence outside Zimbabwe, and lower-level provincial officials now in court after experiencing abduction and torture, is marked.  
END COMMENT.

¶18. (U) Post will report septel the accounts of two of the detainees alleging torture.  
DHANANI